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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,747	10/11/2001	Maxie A. Durel-Crain	P01269US (98151.1P2)	9363

22920 7590 04/23/2003

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT PAPER NUMBER

3761

DATE MAILED: 04/23/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 12

Application Number: 09/975,747
Filing Date: October 11, 2001
Appellant(s): DUREL-CRAIN, MAXIE A.

Seth Nehrbass
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/15/03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because there is only one argument that has been made for patentability. The sole argument has to do with independent claim 20, so claim 22 will stand or fall with claim 20. If claims 20,22, stand or fall on their own, there must be an argument for each claim, which has not been done. The claims will stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

Art Unit: 3761

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20,22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeo (5533990). Yeo discloses the invention substantially as claimed. Yeo does not disclose the claimed length for the string. Yeo discloses a length of normally up to about 8 inches for the string. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the string of Yeo 9 inches in length or even 11 inches in length to provide more string for the user to grasp and manipulate during removal of the tampon. In the event the tampon is inserted further up the vaginal canal than intended, this would ensure that enough string remained outside the body to allow the user to effectively grasp to remove the tampon.

(11) Response to Argument

Applicant has argued that the examiner has used improper hindsight to reject the claims. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

Art Unit: 3761

any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant argues that nothing in the prior art suggests the modification. The examiner has set forth a motivation of why one of ordinary skill in the art would be motivated to modify Yeo. The examiner feels that making the string of Yeo one inch more in length (or 3 more inches) to 9 or 11 inches is obvious to one of ordinary skill in the art. The only difference between the pending claims and the disclosure of Yeo is the length of the string. Simply making the string of Yeo longer appears to only involve routine skill in the art and is not sufficient to patentably distinguish over Yeo.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

DR

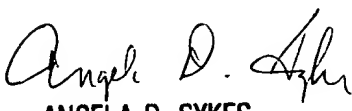
April 21, 2003

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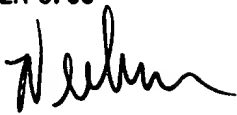


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